

ORIGINAL

JAMES BUSTAMANTE, CA SBN 133675  
809 Montgomery, 2nd Floor  
San Francisco CA 94133  
Telephone: 415/394-3800

Attorney for Defendant  
RODNEY ASUEGA

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JAN 13 2006

at 2 o'clock and 20 min. M  
SUE BEITIA, CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

UNITED STATES OF AMERICA,  
Plaintiff,

v.

RODNEY ASUEGA,

Defendant.

CR 02-00098 HG

DECLARATION OF COUNSEL IN  
SUPPORT OF STIPULATION TO  
CONTINUE PRETRIAL CONFERENCE  
AND TRIAL DATES

In support of the parties stipulated request for a  
continuance, I, JAMES BUSTAMANTE, declare as follows:

I am an attorney licensed to practice in the State of  
California, and I am the attorney of record for defendant Rodney  
Asuega in this case.

The final pretrial conference is presently set for  
January 17, 2006 and trial for February 7, 2005. The parties  
respectfully request a continuance of the final pretrial  
conference and trial dates to May of 2006.

This is the second request for a continuance based on  
Rodney Asuega's medical condition. Incorporated in full by

reference herein is Defendant's previously filed motion to continue and supporting declaration (Exhibit A). As described in the present request and attached memorandum from Dr. Ault (Exhibit B), Rodney's serious medical condition remains ongoing, necessitating a further continuance in this case.

The Court requested that defense counsel provide letters from Rodney's physicians. Rodney's Oncologist, Dr. O'Connell advised that she is on vacation until January 17, 2006, and thus, is unavailable to provide a written account of Rodney's current treatment until after her return. However, pursuant to prior contacts with Dr. O'Connell, as well as Rodney, he completed the latest series of chemotherapy on or about December 13, 2005. He has an appointment for a colonoscopy on January 20, 2006 and for a CT scan on February 16, 2006. Following the CT scan it will be determined if there is any evidence of residual cancer. If there is, Dr. O'Connell advised her recommendation would be to reinstitute chemotherapy. (See also, Dr. Ault's Memorandum, Exhibit B at parag. 2.)

Pursuant to information furnished by Dr. Ault, a specialist in colorectal surgery at the University of California Norris Cancer Center and Hospital, if the CT scan shows no evidence of residual cancer, then a pouchagram will be scheduled, which is an x-ray study that evaluates the small bowel pouch that Dr. Ault reconstructed to replace Rodney's rectum after it was removed. If the pouchagram shows no abnormalities, Rodney will

then be scheduled for takedown of his ileostomy (stoma). (See Exhibit B at parag. 1.) If there is no cancer and the pouchagram is normal, Dr. Ault will schedule Rodney for his third surgery, for "takedown or reversal of his ileostomy." Following that surgery Rodney will be hospitalized for about five days and recovery time averages three to four weeks. (See Exhibit B at parag. 3.)

For the reasons discussed herein, good cause exists to grant this stipulated request for a continuance until May of 2006 in this case.

Time is excludable in computing the time within which the trial of the above criminal prosecution must commence for purposes of the Speedy Trial Act, in order to provide counsel for defendant with the reasonable time necessary for effective preparation and to provide for continuity of counsel, pursuant to Title 18 U.S.C. § 3161(h)(8)(B)(iv); and due to the physical incapacity of the defendant, pursuant to § 3161(h)(1)(A). (For further authorities, See attached Exhibit A at 7 - 9.)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on January 12, 2006, at San Francisco, California.



JAMES BUSTAMANTE